

As further set out in the Restriction, the Examiner has divided claims 1-61 into the following:

1. Species 1, claims 8-19, 25, 51, 61.
2. Species 2, claims 2-7, 26, 28-41.
3. Species 3, claims 20-24, 42-50.

In support of the restriction requirement, the Examiner contends that Groups I and II are combination and subcombination, wherein the “combination [claims 1-61] do not require the particulars of the subcombination [claims 62-70] as claimed because Group I is a wireless group that does not require telephone lines . . . [t]he subcombination has separate utility such as providing prepaid services to traditional telephone systems.” Without conceding that the groups designated by the Examiner are actually a combination and subcombination, the Applicant respectfully points out that the Examiner’s argument is flawed in at least two respects.

First, the Examiner’s characterization of claims 1-61 as a “wireless group” adds limitations that do not actually exist in the independent claims. Nowhere in either claim 1 or 27 does the term “wireless” appear, nor can such a requirement be implied from the language that is present. On the contrary, claims 1 and 27 describe an invention that may be utilized in conjunction with any type of suitable wired or wireless system.

Second, the Examiner’s mistaken characterization has lead to a misapplication of the M.P.E.P.’s restriction rules. In order to establish a proper restriction of a combination and subcombination, the M.P.E.P. § 806.05(c) requires the Examiner to suggest a *separate* utility. The Examiner’s utility for the supposed subcombination of claims 62-70, that it is providing services to traditional telephone systems, is a utility that is perfectly acceptable for the inventions described by claims 1 and 27. Thus, no separate utility has been established.

Moreover, even if Group I and Group II could be shown to be a combination and a subcombination having a separate utility, no proper restriction requirement could possibly be established. As the Applicant noted in response to the Examiner’s previous restriction

requirement, this application, containing claims virtually unchanged since the original filing five years ago, has already been examined four times. The Applicant does not understand what new burden now exists, and respectfully reminds the Examiner that M.P.E.P. § 803 requires the Examiner to examine all of the claims if there is no serious burden in doing so. As shown above, the Examiner has mischaracterized the nature of the claims in Group I, and respectfully suggest that it is this mischaracterization that leads the Examiner to believe that the selected groups are drawn to different art classifications. But even if different classifications do exist, surely any burden this additional search might entail was already borne in any one of the previous *four* such searches.

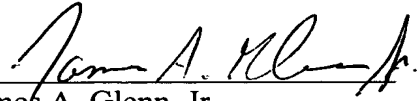
Lastly, the Examiner has required the Applicant to select one of three species designated. Without conceding that the claim groupings are drawn to separate species, the Applicant respectfully reminds the Examiner that the restriction the Examiner is now requiring must still be supported in the same manner as any other restriction. M.P.E.P. § 806.04(b) clearly states that “where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions.” Since the alleged species to which the restricted claims are drawn are clearly related, as evidenced by the Examiner’s own descriptions of the species, the Examiner’s species restriction clearly does not meet this burden. The Examiner gives no reason for requiring this further restriction - nor does the Examiner even attempt to articulate what burden exists in a full examination of all three supposed species.

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 06-2380, under Order No. 47524/P120US/10023619, from which the undersigned is authorized to draw.

Applicant respectfully requests that the Examiner call the below listed attorney if the Examiner believes that the attorney can be helpful in resolving any remaining issues or can otherwise be helpful in expediting prosecution of the present application.

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Respectfully submitted,

By 

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